Supreme Court, U.S.
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In The

Supreme Court of the United States

STEVE WEIL, **Pro-se**,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

STEVE WEIL, **Pro-se**

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74 pp

QUESTIONS PRESENTED

The United States Court of Appeals for the 11th Circuit has rendered a decision contrary to and in conflict with decisions of United States Supreme Court and other courts of appeals, has substantially departed from accepted and usual course of proceedings, thereby calling for exercise of Supreme Court supervisory power:

I. The 11th Circuit Refusal to Exercise Its Authority against Daughter AUSA of One of Its Own Judges to Enforce 28 USC § 458, § 460(b) JUDICIAL ANTI-NEPOTISM ACT Prohibits Father-Judge,Daughter-AUSA From Performing Duties in Same Federal District Court at The Same Time is Constitutional Error.

II. AUSA Failure and Refusal to Recognize Petitioner as a Pro-se Litigator, Non-Service of Process and of Any Pleading Upon Him in District Court is Constitutional Violation of Due Process and of Doctrine of Fair Notice.

III. AUSA Bypassing of Petitioner's Retained Counsel Deprived Him of Right to Counsel Altogether, Counsel's Otherwise Ineffectiveness and Conflict of Interest Deprived Him of any Representation of Competent Counsel, Holding of **"No Right to Counsel"** Privately Retained or Personally Retained Endangers 6th Amend. Const.

IV. AUSA Retaliation for Counsel Not Following Her Legal Protocol and For Petitioner's Exercising His Right to Go To Trial, Deprived Him of His Earned Entitlement to Rule 35(b) Departure.

QUESTIONS PRESENTED – Continued

V. The 11th Circuit "Protectionism Policy," in Its Flawed Opinion of Unprecedented "Presumption" Favoring Government in Absence of Any Evidence, Allegation or Showing That it Was True, Facts and Evidence On Record Proving Otherwise, Deprived Pro-se Petitioner of Due Process.

LIST OF ALL PARTIES

All parties to this proceeding appear on the cover page

1. STEVE WEIL, Pro-se
   Defendant/Appellant/Petitioner

2. UNITED STATES OF AMERICA
   Plaintiff/Appellee/Respondent

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- "Lawyer Responsibility"
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OPINIONS BELOW

As for the denial of Petitioner's Petition For Rehearing En Banc and Court of Appeals' Affirmation of Petitioner's direct appeal to Eleventh Circuit, neither Opinion is published, but can be found as included in the Appendix J, A.

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

Given the Judgment OPINION Affirmation of the United States Court of Appeals for the Eleventh Circuit, dated Sept. 26, 2002, and this Petition for Writ of Certiorari timely filed within the 90-day filing provision of the rules of this court, the jurisdiction of this court is invoked under Title 28 U.S.C. § 1254(1) and Supreme Court Rule 13.1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 28 U.S.C. § 458, 460(b) and § 455(a)

§ 458. Relative of justice or judge ineligible to appointment.

(a)(1) No person shall be appointed or employed in any office or duty in any court who is related by affinity or consanguinity within the degree of first cousin to any justice or judge of such court.

(b)(1) In this subsection, the term –

(A) "same court" means –

(i) in the case of a district court, the court of a singular judicial district;

(ii) in the case of a court of appeals, the court of appeals of a single circuit

(B) "member" –

(i) means an active judge or a judge retired in senior status under section 371(b)

AUSA Jena King practices in the same courthouse with her father Judge King, her name and presence also in numerous appellate briefs at the Eleventh Circuit Court of Appeals, where her father sits by designation, both family members well known personally to the fellow judges on both courts, all of above provisions cited applicable here.

4th, 5th, 6th, 8th, 14th Amendments to Constitution, Due Process and Equal Protection Clauses

Federal Rules of Criminal Procedure – 16(a)(1)(D), 35(b), 45(b), 47, 49(a), 49(b) and Rule 55

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STATEMENT OF THE CASE

This case entails undue influence and prejudice suffered by Petitioner Weil in having his chief case prosecutor-daughter of former chief judge, now active senior judge status, both practicing in same federal district courthouse named after him, at the same time, ongoing exercise of influence and power over impartiality of the courts and the judicial process itself.

The family father-daughter team, effects integrity of the legal system, compromising fellow jurists in Miami district court and Eleventh Circuit Court of Appeals, Judge King sitting by designation, both courts refusing to render adverse opinion against one of their own or against his daughter AUSA, in clear violation of 28 U.S.C. § 458, 460(b), JUDICIAL ANTI-NEPOTISM ACT prohibiting same, courts and government in clear conflict of interest. It includes exculpatory documents to Weil "removed" from Clerk of court files, preventing 11th Cir. viewing same.

This matter emanates from Weil having provided extraordinary substantial assistance under an unrefuted verbal agreement, AUSA King's refusal to file Rule 35(b), reneging after Weil provided all information required under the agreement within one year provision. AUSA's methods of bypassing Weil's counsel altogether is alleged to be a "taking" without just compensation, ineptitude of ineffective counsel a contributor, 6th Amend. violation.

Several arms of government sent teams to visit Weil in prison, to solicit testimony and secure his substantial assistance, Weil never refused, includes: U.S. Senate Committee on Investigation and Committee on Banking and Finance, U.S. Marshals, Treasury Dept., FBI, Secret Service, IRS; SEC in closing British Trade and Commerce Bank (BTCB) and its Miami stock brokerage firm 1st Equity; U.S. Marshal Service in providing critical information that saved the lives of an AUSA and an ATF agent, targets of an organized crime, money laundering and drug smuggling ring vendetta; Fla. Dept. of Law Enforcement (FDLE), Fla. Dept. of Insurance and its Office of Comptroller, Weil assisting in bank, viatical insurance and securities frauds; State Court Receiver for Unique Gems International (UGI); DEA and local law enforcement, among others to whom Weil's information was given, all uncontroverted. It is

undeniable and unrefuted that Weil's extraordinary assistance resulted in great benefit to U.S.

Such outstanding results illogically followed by AUSA's contumacious conduct makes this the single most abusive Rule 35(b) denial in legal annals, stems from AUSA's personal bias, invidious-retaliatory motives, AUSA offended by Weil's ineffective counsel when learning the assassination involved one of his own friends, immediately went direct to Marshal instead of to AUSA first, her legal protocol. Weil alleged his counsel had a serious conflict of interest upon the discovery that one of his friends was targeted for murder, though time was of the essence, counsel opted for his friend rather than his client by not taking it to AUSA first, a flaw setting into motion all subsequent events causing this appeal.

AUSA was furious his counsel bypassed her as case prosecutor, responded in kind, bypassing Weil's counsel in acquiring all his substantial assistance information. Not once did AUSA notify any of Weil's counsel during any of their interviews and acquisition, also unrefuted.

At request of FAUSA, in March 2001 Weil completed a package on three separate subjects, in what he alleges is a "taking" and was to be the final step in Rule 35(b) process. Chief U.S. Attorney thought Weil's information was of such import that he arranged for Marshals to bring him personally to his office to accept his documentation and set a firm date for filing Rule 35(b). Weil, with only one kidney and it only partially functioning, was in the midst of passing a kidney stone, in great pain, and too sick to make the half-hour trip. FAUSA Sabin then instructs BOP to "take" all of Weil's private, personal documentation on all three subjects (BTCB, UGI and Columbia Drug Ring), immediately hand courier it overnight via FEDEX to

FAUSA, providing Weil's Case Manager internal billing number to be charged directly to U.S. Attorney Office.

Weil resisted, asking to be rescheduled, alternatively that his documents be sent to his counsel to give to FAUSA personally, but both refused by BOP. Non-compliance of direct order at FPC is insubordination, Weil had no choice but to give up his confidential reports, Case Manager relaying message "FAUSA needs it immediately, don't worry, everything is being taken care of." In reality, everything was "taken" and nothing taken care of.

On Appeal Weil alleged deprivation of counsel, ineffective assistance of counsel, "in-custody" interrogation absent counsel violated interrogation rules; violation of trust, fraudulent inducement, detrimental reliance, deceptive advice telling Weil he does not require counsel as Rule 35(b) is imminent – to be sealed, all information taken in secret. It offends Sixth Amend. Const., when one has retained counsel, is a "taking", prosecutorial misconduct, violative of due process, AUSA choosing to do so verbally, in secret, absent counsel, preferring not to do so in written form, later declining to file because of no written cooperation agreement, an unbecoming deception. Only after-the-fact extracting all information did FAUSA suddenly change posture, writes to Weil telling him that all future contact must be through his legal counsel only.

Weil complies, prepares a response, trial counsel refuses any involvement, prevails upon his then direct appeal counsel as a favor to forward it to FAUSA, who then in absolute finality refuses to file as "informal office policy" in Miami requires a written cooperation agreement, if true, Weil's ineffective counsel should have known pre-Marshals. AUSA had obligation to disclose this policy before it took his substantial assistance informator. One week remained for one year filing rule. Ben Kuehne, prior appeal counsel,

former law partner of Weil's trial counsel, refused to enter an appearance or handle the matter or even allege ineffective assistance of counsel, as he and trial counsel were still close friends and colleagues. With less than a week left, Weil, a non-lawyer, filed a pro-se Motion to Compel Government to file Rule 35(b), ultimately denied by court. (App.E).

FAUSA filed a feeble 100 word, one-page response (App.C), never served copy on Weil. Court issued its own Order giving FAUSA second bite at apple, to file Supplemental Brief "No later than Nov. 9, 2001." (App.B). Court noticing Weil was not served, sent him a copy of FAUSA infirm response with its Order.[1] Nov. 13th, supplemental response (App.D) signed, evidenced by Certificate of Service, deposited in clerk night deposit box, again not serving Weil copy of process, failing and refusing to recognize him as pro-se litigator. Instead FAUSA sends copy to his co-defendant's trial counsel and former appeals counsel knowing he was not in the case, listed as Interested Party, thought it was courtesy copy, secretary put it in a dead file. This was after Weil had answered AUSA's one-page response complaining of non-service. Both Certificates of Service (App.D,E) reveal lack of service of process on Weil, court record devoid of any other appearance of counsel, non-service renders FAUSA responses nugatory.

Court neglected to send Weil copy of supplemental response, its existence unknown, Weil unable to reply until receipt of Order denial of his motion (App.E). In interim, Weil filed Motion to Strike AUSA one-page

[1] ORDER specifically puts AUSA on Notice to see "Attached Service List" with Weil as pro-se ignored and violated.

Brief and for Summary Judgment, based on non-service, non-compliance with court Order, FRCrP and Local Rule violations by AUSA, so all parties were on notice, Weil sending Judge Seitz copies separately of each of his filings. Examination of record docket sheet shows this motion never entered, yet Judge received her copy, denied same (App.F), Eleventh Circuit deprived of reviewing Weil's legal arguments plus two vital additional "missing" court documents, noted in Panel Opinion (App.A,pg.3,fn.1):

> "However, neither the district court's order nor the government's supplemental response are included in the record on appeal."

Without these three key documents, an informed decision is impossible, yet Eleventh Circuit found government complied, whose own Certificates of Service Nov. 13 show non-compliance, both of court Order filing deadline and non-service of any process on Weil. The documents exist, the Judge had her copies, Weil obtained certified copies from the clerk at that time, all in Appendix, which arguments if valid, government entire defense fails, being only to AUSA's advantage not to have Eleventh Circuit's access to them. Only someone with unlimited and unfettered access to clerk's records could accomplish this, returning missing documents to clerk files after appellate decision as if they were never gone. It is violative of procedural and substantive due process, tampering with orderly court process, pleadings and recordkeeping. It involves backdating of entries by clerk to make it appear as if AUSA complied on Nov. 9th, now obvious that the dates in the docket sheet cannot be relied upon and this court must look to the documents themselves, which the Eleventh Circuit, by its own admission, was unable to do.

Backdating of entry, file tampering and prosecutorial misconduct remain uncontroverted but ignored both by

district court and Eleventh Circuit, holding contrary to facts and evidence. It is not mere coincidence that in the main case, the one FBI #302 exculpatory Memorandum disappeared from FBI confidential Weil C-I File after AUSA King had access to it, with FBI agent testifying he prepared it, but without it to refresh his memory could not recall exact facts and details it contained necessary for acquittal, never refuted, pattern emerges.

Weil raised several material issues of fact in motions below, all denied and on appeal pointed out three specific remarks attributed to AUSA showing bias, invidious intent and retaliatory motives, disregarded by Eleventh Circuit, holding erroneously Weil's claims to be "generalized" when he pled with specificity, also holding "that Weil's efforts to cooperate were unsolicited." Except for the one instance of Weil counsel going to Marshals, in every other instance he was in prison, each arm of government came to see him and solicit his help, Eleventh Circuit finding without basis and uncontroverted by AUSA, never disputing verbal cooperation agreement, only argued Weil had neither a plea agreement nor a written one. Eleventh Circuit in error finding there was therefore no agreement, taking out of context one confirmation letter from Weil to FAUSA, which was to be last stop in Rule 35(b) process, requiring his support as the only agency with authority to file same. (App.A,fn.4). Even this ambiguity due solely to no effective counsel and bypassing him completely, relying on FAUSA statements regarding only one of three situations requested by FAUSA provided by Weil, with two out of the three obtaining outstanding results. The third FAUSA never verified or followed up, wrote pretextual excuse. Eleventh Circuit in false reliance, knowing of non-service says Weil "does not dispute that the government argued in its supplemental response . . . " which response he never received, holding it against him for not answering (App.A,fn.1). On learning of supplemental

response, Weil filed Motion for Reconsideration to respond, for evidentiary hearing, vigorously disputing AUSA disinformation to court, Weil stating his credibility soared, contrary to AUSA false innuendo, positive results as proof. AUSA statement that his information was "subject to allegations of coaching and tailored testimony . . . " is pretextual conjecture, unverified, without any actual allegation it was true, which it was not. This inference is contrary to the signed statement of both named FPC inmates, annexed as exhibits to Weil's motion to compel, another witness submitted as to accuracy of events.

Yet Eleventh Circuit gave this suspect innuendo an absolute presumption in favor of FAUSA with no burden of proof or evidentiary foundation of its accuracy. Everything can be subject to something, but this presumption stands law and rules on its head. Even if true, which it is not, AUSA does not dispute all other substantial assistance or results. It is this one last subject on which FAUSA hangs its hat, ignoring all other assistance. FAUSA alleged and Eleventh Circuit concurred that Weil's assistance regarding this third situation was "at odds with sound law enforcement gathering techniques" making this statement without AUSA ever following up or finding out which techniques were used. It is conjecture, since Weil used the very same methods, techniques, individual typed profile forms he was taught to use by FBI and had been using for 20 years, with outstanding results. He also made sure a witness (Hammer) was present for verification purposes, obtained signed statements from each of the two Columbian subjects, fellow inmates Ruiz and Giraldo, included in Motion to Compel exhibits. Evidentiary hearing would have established veracity of his information.

In rebuttal to this artifice, Weil points to the closing of BTCB within months of providing information to FAUSA

and indictments of UGI a year after FAUSA's "taking" of his documents simultaneously with BTCB matter, via BOP, overnight courier, in their anxiety to get possession of it, knowing importance it contained. Extraordinary assistance results achieved speaks for itself.

Eleventh Circuit nor AUSA denied Weil's ineffective assistance of counsel or that AUSA denied him of counsel altogether, just that he was not entitled to any counsel, which only serves to nurture and protect AUSA conduct. Weil arguing right to counsel never unattached, all events commencing two weeks after trial, prior to sentencing, post trial motions and appeal, all counsel retained by Weil to prevent such situation. Weil asserts ineffective assistance of counsel stems from counsel never raising defense of 28 U.S.C. § 458, 460(b) and it escalated from there, his serious conflict of interest that did save his friend, but put Weil where he is today, by not first going to AUSA securing a written cooperation agreement, or securing it from Marshals before allowing Weil to divulge information.

AUSA knew of all benefits derived from Weil, suppressed it in her district court responses, preventing it from making an informed decision, rubber stamping AUSA false position. It is deprivation of due process, hearsay hypocrisy, with no counsel to protect Weil, by an AUSA who pursuant to 28 U.S.C. § 458, 460(b), 455 is not legally practicing law in Miami James Lawrence King Federal Courthouse, invalidating all proceedings below.

REASONS FOR GRANTING PETITION

This case has all the elements of constitutional magnitude violations including government prejudice by way of: 1) waiver, condoning and encouraging and ignoring 28

U.S.C. § 458 Judicial Anti-Nepotism Act, in allowing a family team to practice law simultaneously, in federal courthouse contrary to law; 2) AUSA's deliberate avoidance of, bypassing completely Weil's own retained counsel in both his in-custody interrogation by various arms of law enforcement and in the methods used by them constitutes, Weil alleges to be a "taking" without just compensation; 3) deprivation of counsel, ineffective assistance of counsel generally and ineffective assistance of Rule 35(b) counsel specifically, all of which were retained, not appointed counsel, all seriously impacting Sixth Amendment right to counsel in different ways; 4) non-service of process, AUSA refusing to recognize pro-se litigant in his own case as a valid litigator and right to represent himself; 5) violations of "Fair Notice Doctrine," inability to respond due to non-service, being held against Weil for not replying by appeals court, smacks of manifest injustice and lack of basic constitutional rights; 6) disappearance of 3 key court filed documents from the clerk's office that would have proved conclusively Weil's allegations, his own copies annexed to Appendix, bringing attention to serious violations of recordkeeping and lack of preservation of evidence vital to burden of proof; 7) constitutional lack of conformity and violative methodology employed in the decision-making process of granting/denial of Rule 35(b) filings, with no meaningful DOJ policy in force or firm guideline, resulting in abuse, arbitrary, capricious decisions, no uniformity in application to others similarly situated; 8) violations of basic, established federal rules of burden of proof, by use of empty assertions, unsupported inferences, innuendo-giving government absolute presumptions in its favor; 9) Court of Appeals' refusing to hear or even comment on § 458, 460(b) violations ignored serious breaches and guarantees that courts consider matters presented in adversarial context. Unusual to have all these elements in

one case, is a wake-up call to machinations in Miami Federal Court, flowing through to Eleventh Circuit, whose great disparity split with other circuits on Rule 35(b) application, chilling deliberateness of AUSA misconduct, sorely needs this court's resolution, guidance and review.

QUESTIONS PRESENTED

Any one of these questions are of vital importance to the criminal justice system standing alone, but combined caused unconstitutional prejudice impossible to overcome.

I. THE ELEVENTH CIRCUIT REFUSED TO EXERCISE ITS AUTHORITY AGAINST DAUGHTER – AUSA OF ONE OF ITS OWN JUDGES AND ENFORCE 28 U.S.C. § 458, 460(b) JUDICIAL ANTI-NEPOTISM ACT PROHIBITION OF A FATHER-JUDGE, DAUGHTER-AUSA, PRACTICING-PERFORMING LEGAL COURTHOUSE DUTIES IN SAME FEDERAL COURTHOUSE AT SAME TIME.

This Petition effects the integrity of our entire legal system, government waived enforcement of 28 U.S.C. § 458, 460(b), 455 contrary to the clear unambiguous language of law, Eleventh Circuit failed and refused to address or even comment, to hear same en banc, King's sphere of influence reaching into the bowels of the appeals court itself. This law being tested for the first time, Weil unable to find one case of direct precedent. Undue influence, propensity to influence, conflict of interest all prevelant, AUSA receiving undeserved, favorable decisions.

Failure to support clear law by those delegated the responsibility to uphold it, the public expecting equal vigor

enforcement of violations of other statutes, such as corporate corruption, is absent. The same ethical standards, if not higher, applicable to enforcers if public confidence in courts is to prevail, one it has lost in corporate America, there being an unconstitutional "lock" on justice in Miami Federal Court to such extent that Weil has had to represent himself pro-se, out of necessity initially, but being unable to obtain representation from any lawyer in Miami. All counsel interviewed, fearful of incurring wrath of King's fellow jurists, effecting their own practices in "King Family Courthouse" as it is commonly known in Miami.

Direct linkage of this "lock" evidenced by serious docket sheet tampering, removal of documents, inaccurate recordkeeping all favoring AUSA King, is subversion of justice, undue influence reaching new highs. The clerk fearful of its job trying to accommodate the powers that be, compromised Weil and the system – no equal justice for all, no due process at all. A pattern of misconduct emerges, cries out for independent, impartial review by this court.

> "A practice is considered unfair when it offends established public policy as well as when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious." *South Atlantic v Riese*, 284 F3d 518 *at* 535 (4th Cir 2002), fundamental miscarriage of justice *at* 541.

Above applicable to all aspects of this case, AUSA methods and use of extracted assistance with no compensation whatsoever, its pattern of unsubstantiated, pretextual conjecture for its illogical, no rational basis, denial to file, numerous instances of outright fabrication and other misconduct which led to this litigation, on review will be found that AUSA's legal position was not "legally tenable." *Berg v Leason*, 32 F3d 422 (9th Cir 1994); *Reed v Farley*, 512 US 339, 348. Further:

> " . . . the inquiry of federal courts . . . must be limited to the issue of whether a particular system violates any prohibition to the constitution." *Bell v Wolfish*, 441 US 520 (1979). Also see *Burke v U.S.*, 152 F3d 1329, 1331 (11th Cir 1998).

The entire system under which Weil was indicted, tried, sentenced, and denied his Rule 35(b) was contaminated by AUSA King, exercising undue influence pre and post conviction, reaping fruits of poisonous tree. *Wong Sun v U.S.*, 871 US 471. This practice violates "fairness and justice" purposes of Fifth Amendment Constitution ideology of fundamental fairness, due process and ethical-moral considerations, absent here. *U.S. v Calhoon*, 97 F3d 518, 532 (11th Cir 1998) manifesting a tendency to influence government agency; *U.S. v Rodriguez*, 840 F2d 697, 700 (9th Cir 1998), 18 USCA § 1001, a threshold "need only have a propensity or capacity to influence or affect" agency or court (decision); *U.S. v Grizzle*, 993 F2d 943, 948 (11th Cir 1991), explicit evidence showing how either statements or conduct influenced, or may have influenced government agency or court is not required. Eleventh Circuit ignored its own case-circuit precedent, AUSA's illegal agent of government, practicing in same courthouse as her father. 28 U.S.C. § 458, 460(b), 455(a).

In Re Paschen, 296 F3d 1203 (11th Cir 2002) [7 to 10] July 10, 2002 makes it clear. Weil's entitlement to be prosecuted by conflict free AUSA, to Rule 35(b) he earned and was promised, not violative of due process, fundamental fairness. *U.S. v Steele*, 147 F3d 1316, 1318 (11th Cir 1998) en banc, also Eleventh Circuit case. USCA Const. Art. III § 2, court denied en banc to Weil, unlike treatment, going out of the way to sidestep the issue, ignore precedent, render decision conflicting with other circuits and this court, departing from accepted and usual

course of judicial proceedings, calling for exercise of Supreme Court supervisory power to combat "willful blindness." *Bryan v U.S.*, 524 US 184, 192; *A.E. Stanley v Secty of Labor*, 295 F3d 1341 (D.C. Cir 2002) [2,10,11]; *U.S. v Wilson*, 290 F3d 347 (D.C. Cir 2002). Clear conflict existed, contrary to AUSA oath demands highest moral standards, must be imposed, but was not, needs rectification.

> "Nothing can be more elusive of estimate or decision than disposition of mind in which there is a personal ingredient." *Berger v U.S.*, 255 US 22, 36.

This protectionism policy, of favoring its own fellow jurists and their siblings, similar to the systematic infirmities of district court, both loathe to exercise its authority, decide on merits and adequacy of evidence and facts, have shun them in an unjust resolution.

II. AUSA FAILURE AND REFUSAL TO RECOGNIZE WEIL AS PRO-SE LITIGATOR, NON-SERVICE OF PROCESS AND OF ANY PLEADINGS UPON HIM IN DISTRICT COURT IS UNCONSTITUTIONAL, LACKS DUE PROCESS.

Appeals Court incredulously found AUSA complied with Nov. 9, 2001, filing deadline of district court, who on its own volition magnanimously gave AUSA opportunity to correct defects in deficient one-page original response (App.B,C,D) compliance a "legal impossibility" unrefuted by AUSA, bolstered by Eleventh Circuit's own admission of missing pleadings (App.A-3 n.1) upon which its opinion relies. Examination of its Certificates of Service (App.C,D) reveals it was not typed and signed until Nov. 13, 2001, then "Night Box" filed, received by clerk Nov. 14, entry

backdated to Nov. 9th, shows non-service on Weil, pro-se, same as AUSA original response, lack of process renders government pleadings void.[2] Appellate finding is manifest injustice, as was in district court. *U.S. v Ritter*, 540 F2d 459 (10th Cir 1979).

This goes right to the heart of Weil's unrefuted allegations as to manner and motives of missing pleadings. Weil pled with specificity at Eleventh Circuit, filing pro-se Motion to Strike Government Brief and For Summary Judgment, based upon these very facts and others equally critical, denied by court, although unanswered and uncontroverted. Weil alleges this failure to reply or rebut should be deemed "waiver" by government and admitted. Absence of these key documents enabled Eleventh Circuit to erroneously opine an uninformed decision gifting AUSA who never denied allegations, upon which Weil's liberty depends. Copies could have been easily ascertained from AUSA, from Weil or from Judge Seitz's own office file.[1] Instead it decided this simple lack of notice issue adversely, in manner with non-factual reasoning, so far departed from accepted and usual burden of proof mandated by clearly established law, absent entitled impartiality in an expression of protectionism, as to call for this court's review. It has endorsed AUSA acts and provided umbrella for continuation without accountability, in

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[2] AUSA Certificate of Service bears "N:/bsabin/weilR35SUPLrsp: wpd" at bottom, when read with footnote 1 together, leaves no doubt as to AUSA's awareness to serve Weil, pro-se, but failed to. Motion to Strike and Motion for Reconsideration specifically addressed non-service.

another undeserved fruit from yet another court's tree. *Wong Sun, supra; Laudermilk v Barnhart*, 290 F3d 1265 (11th Cir 2002); *Fullwood v Lee*, 290 F3d 663, at 667 [29,36-41,50] (4th Cir 2000).

The Eleventh Circuit also ignored Weil's Motion for Reconsideration to district court seeking opportunity to respond to non-service violation and for evidenitary hearing. AUSA does not even reply or object as if already certain of outcome, court denial (App.G) its "purposeful availment" aimed at preventing Weil's responding, successfully executed, believing that pro-se he would be finished – never appealing, causing the instant harm of loss by default. Fifth Amend. Const.

No Fair Notice is constitutional violation and prosecutorial misconduct, prejudicial no due process. *Rio Properties v Rio Intern*, 284 F3d 1007 (9th Cir 2002); *Mullane v Central Hanover Bank*, 339 US 306, 341, 70 S.Ct. at 652; *Calder v Jones*, 465 US 783, 788-89. The Eleventh Circuit violated "effects doctrine" of non-service by the very court which should uphold it. *Nichols v Harbor Ventures*, 284 F3d 857, 858 (8th Cir 2002) holding particularly applicable here, Weil still reeling from "effects" of AUSA's acts, compounded by court's complicity in miscarriage of justice.

III. AUSA'S DELIBERATE BYPASSING OF WEIL COUNSEL DEPRIVED HIM OF HIS RIGHT TO COUNSEL ALTOGETHER AND COUNSEL'S OTHERWISE INEFFECTIVE PERFORMANCE AND CONFLICT OF INTEREST DEPRIVED WEIL OF ANY EFFECTIVE REPRESENTATION OF COUNSEL.

AUSA, in its appeal brief, admits motive "Bypassing the prosecutor . . . " unrefuted anywhere in the record that

she deliberately, methodically, systematically bypassed retained counsel in retaliation for his taking Weil's information in saving lives of two agents, directly to Marshals, rather than to AUSA King first. It ruffled her ego to point of no return, becoming vendetta and directly the cause of this litigation and Weil's continued incarceration. The Eleventh Circuit concluded "Weil went over prosecutor's head. . . . " (App.A-7 n.5), he being in prison had no ability to go over anyone's head, shifting blame from counsel, as if it were Weil's fault, is erroneous, illogic reasoning.

In an unquestionable adversarial context, the Eleventh Circuit held Weil's right to retained counsel was not attached, had no right to his own retained counsel regardless of counsel's ineffective performance, all relevant events commenced just ten days after trial, prior to presentence report, post-conviction motions, sentencing itself, before filing of direct appeal – at a time when right to counsel was vital and never unattached. Counsel's deficient performance was never disputed by AUSA and never addressed by appeals court. *Strickland v Washington*, 466 US 668, entitled to retained counsel even if he was ineffective, deprived by AUSA acts, counsel set in motion all events being both cause and effect of Weil's situation. Eighth, Fourteenth Amend. Const. Actual conflict of interest, Sixth Amend. Const. *Cuyler v Sullivan*, 446 US 335. Ineffective for not raising 28 U.S.C. § 458, 460(b) and not securing written cooperation agreement first.

> "Weil did not have a plea agreement, but was convicted after a jury trial. In addition, although we have not addressed the issue, the Fifth Circuit has held that a criminal defendant does not have a constitutional right to counsel in a Rule

> 35(b) proceeding. *United States v Palomo*, 80 F3d 138, 142 (5th Cir 1996)" (App.B-9)

> "We conclude that, because a Rule 35(b) motion is not a stage of the criminal proceeding where a defendant's substantial rights may be affected, no Sixth Amendment right to counsel attached during Weil's Rule 35(b) proceeding . . . is not one in which fundamental fairness necessitates the assistance of a trained advocate." (App.A-10)

One need only look at unpragmatic consequences without counsel to see the fallacy of its opinion. Above admittance that "we have not addressed the issue" although this case afforded a perfect opportunity for it to do so, the Eleventh Circuit refused rather than have to decide it in Weil's favor, instead relying on unpersuasive, far removed facts and circumstances from Fifth Circuit, not even remotely on point. *Palomo* is inopposite to facts here, having two sets of appointed counsel arguing as to who will represent Palomo, AUSA not adversarial having received his Rule 35(b), disputing the sufficiency of only a 5 year reduction he received, court fed up with yet another hearing. If he was not entitled to counsel, the court would not have appointed them for original hearing, holding entitlement exists in every stage of criminal proceeding in which fundamental fairness and assistance of trained advocate is required, court had facts, held no counsel needed. *Ross v Moffitt*, 417 US 600; *Downs v Hoyt*, 232 F3d 1031 (9th Cir 2000) "exceptional circumstances" rule, where review will prevent miscarriage of justice. *Mempa v Rhay*, 389 US 128, 134 (1967); 18 LEd2d 1420; *U.S. v Lopez*, 106 F3d 309 (9th Cir 1997) held AUSA contacting defendant in counsel absence seriously affected "defendant's opportunity for full and fair plea negotiations." *U.S. v Kahn*, 920 F2d 1100, 1105 (2nd Cir 1990); *U.S. v Kuntz*, 908 F2d 655, 657 (10th Cir 1990); *U.S. v Ganz*, 806 F. Supp. 1567 (S.D.Fla.1992)

directly on point, citing Justice Brandeis in *Olmstead v U.S.*, 277 US 438, 439. 11th Circuit no counsel ruling could spread to all post conviction hearings, § 2241, 2255 *et al.*

IV. AUSA RETALIATION FOR COUNSEL NOT FOLLOWING HER PROTOCOL AND FOR PETITIONER'S EXERCISING HIS RIGHT TO GO TO TRIAL, DEPRIVED HIM OF HIS EARNED ENTITLEMENT TO RULE 35(b) DEPARTURE.

Existence of verbal cooperation agreement unrefuted by AUSA, but Eleventh Circuit wrongly found no such agreement existed. Under their theory, Weil for no reason, put himself and his family at great risk with no initiative and gratuitously identified fellow inmates and accomplices planning to murder two agents, doing so on advice of counsel who said he had "everything all arranged," confirmed by Marshals, saying it would help Weil substantially, get him a Rule 35 and possible immediate freedom, never hinting a written agreement be secured first. As a former AUSA, counsel should have known of such "informal policy if it existed." It was always Weil's intention to be rewarded for substantial assistance, it was just how much departure the court would see fit to grant that was uncertain, with 39 uncontroverted items relating to substantial assistance and other issues AUSA never disputed.

Although another legally appointed AUSA could have tried this case, AUSA King did so while pregnant, lamenting bitterly that Weil made her go to a month trial in her condition and then right after sentencing laughingly said in substance "It's too bad he won't be able to use his boat now" venting an unjustified paranoia she always had about Weil's ex-boat. Weil alleged below that socio-economic factors are not valid consideration for denying departure. *Melendez v U.S.*, 518 US 120 (1996) but Eleventh Circuit

held inopposite, finding there is nothing wrong in AUSA statement or attitude (App.A-7 n.5), Weil alleges it is indicative of her motives. *U.S. v Stockdall*, 45 F3d 1257 (8th Cir 1995). Court precedent agrees "exceptional circumstances" Rule applies here as well. *In Re Home America v Appliance Audio*, 232 F3d 1046 (9th Cir 2000); *Anderson v Calderon*, 232 F3d 1053 (9th Cir 2000) festering agitation of AUSA evident, adds to severity of other contumacious conduct emanating from breach of legal protocol, goes directly to invidious intent, motives, festering malcontent, unjustified bruised ego, distorted priorities.

Sentence departure is judicial function, AUSA's role is limited and "required" to bring to court's attention. *Mistretta v U.S.*, 488 US 361, 390. Then only factors relating to actual assistance can influence departure. *U.S. v Thomas*, 930 F2d 526, 529 (7th Cir 1991). AUSA's refusal is sentence manipulation, bad faith, irrational in face of all benefits achieved, suppressed by AUSA, used false facts, fabrication of contra speculative theory, preventing court from informed decision, violating due process. *Mooney v Holohan*, 294 US 103, 112-113. Refusal to file, deliberate non-service, backdating of entry, violation of rules is gravamen, missing clerk documents are of sacrosanct proportions (App.B,C,D,F) undue influence, propensity to do so.

The Marshals' assistance mushroomed into over a dozen different instances of assistance, telling Weil that in addition to their own investigation, his information would be shared with other agencies such as FBI and Weil was to cooperate with each of them per the verbal agreement, which he did. Weil was in a "Catch 22" if he did not continue to assist, AUSA could then claim he did not live up to their agreement, so he gave all he had to give on several different subjects – to various arms of government, enticed to continue without counsel, in secret, his family at risk,

relying on "trust of government" who confiscated his personal, private documentation, waiving Rule 35(b), with no filing intent, preying on his age, poor medical condition and vulnerability, giving him hope where unknown to Weil at the time, there was no hope, only false promises.

Weil's BOP information yielded significant results to FAUSA on BTCB and UGI. Within just a few months of the Documentation "taking," BTCB and its subsidiary stock broker closed, licenses revoked, assets seized, criminal investigation instituted. On Aug. 27, 2002, all UGI promoters indicted in Miami, a direct result of Weil's assistance, thirteen million dollars recovered, the Eleventh Circuit in possession of Weil's pleading with U.S. Attorney newspaper announcement article as exhibit at en banc level. Three U.S. Senate investigators came to FPC to solicit his help, issued letter of assistance and cooperation to Warden, is also Exhibit in the record below.

AUSA never refuted "taking" which violates "fairness and justice" purposes of Fifth Amend. *Bowen v Agencies Opp. To Soc. Sec. Entrap.*, 477 U.S. 41, 5th Amend. "Taking" Annotation, at 91 LED2d 582 (1988); clearly establishes even "intangible rights" subject to taking. *Washington Legal Foundation v Texas Equal Access to Justice*, 293 F3d 242, 248 (5th Cir 2002) at 247. Events assault all notions that Weil's property shall not be taken without just compensation. *U.S. v Lorretto*, 485 US 435, 102 S.Ct. 3164, per-se analysis BOP/AUSA physical invasion of Weil's legal-confidential reports in something described as rights "to possess, use and dispose of." *Phillips v Washington Legal Foundation*, 524 US 170, liberty rights attached to Weil's documents, infringed upon, then repudiation of contractual obligation of verbal agreement deprived Weil of his property, used to benefit government is a "taking" by this court's own precedent.

No "government ends" test is met, deprivation for personal, invidious, retaliatory motive, Weil made "substantial threshold showing," Eleventh Circuit restrictive application of *Wade v US*, 504 US 181, a reason for plethora of litigation on this subject, great split with all other circuits, Weil below citing over 50 cases from every circuit supporting his position. *Id*, 184, 186. AUSA violated oath and published ground rules discouraging certain types of behavior and unethical conduct – Attorney General Manual for AUSA ignored here, escaping unscathed only because of who she is related to. Judges can be very charitable to each other or their kin, a built-in bias of protectionism exists in district and appellate court, the latter being the more chilling of the two. It is a negative sum policy, benefits personal goal of this unusual, no ordinary AUSA, at Weil's expense and others similarly situated. It is anti-judicial, anti-equal justice for all, will not wither, will gain momentum without this court's intervention. Ethics, morality, honorable conduct should be goal, all absent here. Lack of it in AUSA's culture requires the attention and correction of this court.

V. THE ELEVENTH CIRCUIT'S PROTECTIONISM POLICY EVIDENT IN ITS FLAWED OPINION OF UNPRECEDENTED "PRESUMPTION" IN FAVOR OF GOVERNMENT IN ABSENCE OF ANY EVIDENCE OR SHOWING THAT IT WAS TRUE, ALL FACTS AND EVIDENCE IN RECORD PROVING OTHERWISE.

AUSA's conduct must be held to a "heightened security" not a lesser one, its oath enforced even if she is found to be practicing law illegally as government agent. Weil alleged he was entitled to presumption of prejudice and of vindictiveness, Eleventh Circuit totally ignored all of his

valid evidence, took AUSA's bogus conjecture, speculative, pre-textual statement, which was nothing more than an empty assertion innuendo, an inference or suspicion and the court adopted it without any usual burden of proof, as an absolute presumption as true. It is undeserving and impermissible, upon which it based its opinion. It epitomizes what the law is designed to prevent.

> "Weil's allegations were not of sufficient import and credibility; were not based on first hand information; were subject to coaching and tailored testimony due to Weil's collaboration and 'hours and hours' of discussion with fellow inmates Hammer, Giraldo and Ruiz; and were at odds with sound law enforcement evidence gathering techniques." (App.A,pg.3,fn.1)

Taken verbatim from AUSA's brief, (App.D) adopted by both district and appeals courts after all information was "taken" from Weil is specious, pretextual coverup. This and another quote from FAUSA "hedge letter" that he only made a "good faith gesture" in "taking" all of said property to review and on this basis alone Weil was foolish enough to put himself and his entire family in grave danger of real harm (App.A,pg.6,fn.4). The facts, evidence in record and results achieved speak for themselves. The one letter from Chief U.S. Attorney sent to BOP, which Weil was provided copy and AUSA sought to retrieve but he had already mailed it home, is an exhibit below, contains all ingredients necessary to prove motive.

AUSA had Weil's complete history, all his files, knew exactly what his credibility was before they took all his substantial assistance. If he was not credible, how does one account for all the incredible results and AUSA's passage of information to other agencies, in which role they acted as surrogate for Weil, who only used sound,

proven law enforcement techniques, in compliance with those taught to him by FBI. This citation was used regarding just one of three compilations provided in BOP package to FAUSA, being silent on the other two, which yielded outstanding results. AUSA never denied that on this one sole subject, they made the above assertion without ever having checked, verified or interviewed any of the subjects, without which quote is purely speculation – but they passed on the information to others anyway.

The statement is without any basis, no less rational one, is diversionary smokescreen, disinformation to hack away at the truth and avoid filing, without any burden of proof in "counter-factual" assertions. Starting with breach of legal etiquette by counsel, becoming resentment against Weil for "causing" AUSA to go to trial while pregnant, exercising constitutional right to do so, building from an irritation to agitation vindictiveness, has engulfed Weil in this litigation. *Blackledge v Perry*, 417 US 21. Intentional inaccurate, false picture to court is fraud. In deference to Judge King, courts gave presumption and preference to AUSA King includes undeserving second bite at apple. *Miracle v Estelle*, 592 F2d 1269 (5th Cir 1979) [3,4,7,12] Fifth, Fourteenth Amend. Const., sentence manipulation by suppression of substantial assistance results, prevents honest, unbiased, informed decisions. 28 USCA § 455(b)(iii), § 455II, n.52, 53, 246, 247, 355, 386; § 458, 460(b).

Presumption wrongly exonerates AUSA, discourages Rule 35(b) for others to avail themselves, is a dagger in the heart of justice, convoluted skullduggery plotted at Federal Courthouse. Radical truth is legal depravity and injustice, totally undeserved, intentional misdeeds of extraordinary character, AUSA under strict obligation to inform court of post conviction facts possibly affecting Weil's sentence, instead of suppressing them, preventing Rule 35(b). *Imbler v*

Pachtman, 424 US 409, 47 LEd2d 130, 131 [9a,9b,11]; *Pennsylvania v Ritchie*, 480 US 29; *Sneed v U.S.*, 298 F3d 911-12 (5th Cir 1924), this court holding:

> " . . . the justice being administrated was the justice of the United States, and its purity and freedom is to be protected by federal law."

AUSA as case prosecutor infected judicial making process, depriving lower court's own original jurisdiction to even try it, both district and appeals court ignoring genuine issues of material fact, evidence and exhibits set forth in Weil's pleadings, demands reversal and vacating of all judgments. A serious miscarriage of justice caused by one who has a pecuniary interest contra to that of the law, statutes, the public, congressional intent and Weil's liberty interest. Simple, basic non-service is due process violation AUSA failed to rebut. The Eleventh Circuit's finding compliance without missing order and pleadings as contra proof, a "legal impossibility" is yet another erroneous presumption, certificates of service now in this App.B,C,D. *Rand v Rowland*, 145 F3d 952, 958 (9th Cir 1998); *Bounds v Smith*, 430 US 817, 822-23. Holding of no right to retained counsel in post conviction proceedings cannot stand even if counsel is ineffective. Caustic treatment of Weil uncalled for, unconstitutional. *U.S. v Weiner*, 439 US 981 and 439 US 1135. No morality, fundamental fairness or due process present, all as a result of a breach of legal protocol by grossly ineffective assistance of counsel, a travesty only this court can rectify, but nothing can justify.

AUSA caused both courts to ignore genuine issues of material fact, her family relationship and undue control it exerts over the way justice is dispensed in Miami, endorsing undeniable misconduct of the tightly intertwined

events presented by the actual circumstances and prejudice in this case, another fruit from another court's tree. *Wong Sun, supra*. In deference to Judge King, courts giving preference to AUSA King, following district court lead in first a second bite at the apple and then adopting false, speculative innuendo, undeserved presumption and prejudice to Weil. The arrangement raises serious questions regarding "appearance of improprieties," to say nothing of the acts themselves, § 458, 460(b) contemplated such conflicts and strictly prohibited them.

Inability of Eleventh Circuit to correctly resolve an obvious,[2] clear issue of non-service, surely makes their entire opinion suspect, which issue AUSA never rebutted, nor did they do so on serious allegation of backdating court entry, knowing it was true. In following protectionism policy, refusing to hear, no less decide two vital matters, defeats purpose of appellate process to opine on issues presented for the first time. 28 U.S.C. § 458, 460(b) and ineffective counsel in Rule 35(b) post-conviction process, repercussions of its controversial "no right to counsel" having national implications of constitutional magnitude, affects many others, contrary to tradition and precedent.

Refusal to enforce plain, unambiguous language of § 458, 460(b) combined with its no right to retained counsel in pre-Rule 35(b) proceeding, which proceeding was never even reached here due to distorted priorities of AUSA, court of appeals dereliction of its duty to Weil exactly as district court did in refusing to seal highly incriminating substantial assistance documents submitted in confidence to the court (App.H) and then suddenly on no motion, district court on its own volition unsealing those pleadings Weil filed under seal (App.I), exposing him and

his family to unnecessary risk of harm – his reward for saving the lives of two agents, setting all logic aside.

This circuit has an unusual history of declining when there is no Supreme Court or Eleventh Circuit precedent on a given issue like the ones in this case, to Weil's detriment, even when they are plain, clear simple errors of constitutional proportions, no matter how blatant or egregious, as this case proves, 11th Circuit holding:

> "We have therefore held that 'where neither the Supreme Court nor this Court has ever resolved an issue, and other circuits are split on it, there can be no plain error in regard to that issue.'" *U.S. v. Aguillard*, 217 F3d 1319 at 1321 (11th Cir 2000) citing *U.S. v Humphrey*, 164 F3d 585, at 588 (11th Cir 1999).

Two of the Questions Presented fall into this category: Holding of no post conviction right to retained counsel and violations of § 458, 460(b), both of which are plain, clear, unrefuted in the record. Just because the Supreme Court has not addressed them, the Eleventh Circuit refuses to address, depriving Weil of a just decision, unjustly continuing his incarceration. Fifth Amend. Const. provides "No person shall be . . . deprived of life, liberty or property without due process of law" which Weil has not attained, AUSA's "taking" his property, his liberty and substantially shortened his only 70-year life expectancy, due to his immune complex disease and only one kidney, among other ailments, all of chronic nature. Refusal to address is also reflective of Eleventh Circuit protectionism policy, is demonstrative of the perilous legal landscape this pro-se petitioner has had to cope with and the aftermath of his continued incarceration for no valid reason. In a culture of disbelief, here the truth is harder than any fiction, Weil

having lost over a whole year of his shortened life span just on this appeal (filed Oct. 5, 2001). Having waited from Oct. 6, 2000, another full year during which time he rendered his substantial assistance, only to be told that the appeals court will not opine on something the Supreme Court has not already decided, a drill to further delay this Court's own intervention and review. This makes it even more compelling for the Writ of Certiorari to be granted.

Controversial holding of no personal retained counsel in post conviction proceedings, under these circumstances, and prejudice cannot be allowed to stand without this court's review. Even if counsel is completely deficient, had a conflict of interest, undeniably ineffective, also unrefuted anywhere in the record, his role was to protect Weil from just the kind of abuse he has been subjected to here, after providing exceptional substantial assistance, facing unusual obstacles beyond his control and not of his own making. Events here are not representative of *Sneed*, *supra* and must be reviewed by this court to see the full miscarriage of justice by one who has a pecuniary interest together with the great disparity between the Eleventh Circuit's application of Rule 35(b), its no right to counsel, as against all other circuits and constitutionality.

CONCLUSION

The King family team practicing together exerted undue influence on all judges in both district and appellate courts, contrary to § 458, 460(b), the Equal Protection and Due Process Clauses, violates the Fourth, Fifth, Sixth, Eighth and Fourteenth Amend. Const. Counsel's ineptitude conflicted with interests of Weil, but at least his

presence would have afforded some measure of protection, an imprudent breach of legal etiquette onus is on AUSA and Weil should not be held accountable for it, but is paying a heavy price. All inferences drawn should be held against AUSA, particularly the 39 uncontroverted ones. Certiorari should be granted, or else this case threatens the very foundation of our legal system.

December 20, 2002.

Respectfully submitted,

Steve Weil, PRO-SE

/s/ Steve Weil, **pro-se**
STEVE WEIL, **Pro se**

APPENDIX

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 02-10123
Non-Argument Calendar

D.C. Docket No. 98-00866-CR-PAS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

STEPHEN G. WEIL,

Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Florida

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(Filed July 31, 2002)

Before ANDERSON, DUBINA, and HULL, Circuit Judges.

PER CURIAM:

Steven Weil, a federal prisoner proceeding *pro se*, appeals the district court's denial of his post-judgment motion to compel the government to file a substantial assistance motion pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure. After review, we affirm.

APP. A

I. BACKGROUND

On May 12, 2000, Weil was found guilty by a jury of conspiring to launder property represented by a law enforcement officer as drug trafficking proceeds, in violation of 18 U.S.C. § 1956(h) and conducting and attempting to conduct financial transactions designed to conceal and disguise property represented by a law enforcement officer to be drug trafficking proceeds, in violation of 18 U.S.C. § 1956(a)(3)(B). On October 6, 2000, the district court sentenced Weil to a term of 83 months in prison, to be followed by three years of supervised release. Weil appealed his conviction and sentence, both of which were affirmed by a panel of this Court on November 15, 2001.

On October 5, 2001, Weil filed in the district court a *pro se* motion to compel the government to file a Rule 34(b) motion, or in the alternative to reduce his sentence for substantial assistance. Weil argued, among other things, that the government's refusal to file a Rule 35(b) motion was in bad faith and violated his due process rights. According to Weil, the government's motive for refusing to file the Rule 35(b) motion was its desire to punish him because he was a former FBI informant who had "transgressed the limits of the law" and this motive was unconstitutional. Weil also argued that the government's decision not to file a Rule 35(b) motion was not rationally related to legitimate governmental objective.

The government opposed Weil's motion, arguing that it had reviewed Weil's offer of assistance and in good faith declined to enter into a cooperation agreement with him, that Weil had not rendered substantial assistance, and

that Weil and failed to demonstrate an unconstitutional basis for the government's decision.[1] In response, Weil requested an evidentiary hearing. Weil also filed a motion to strike the government's response to his motion to compel based on non-responsiveness and for summary judgment.

The district court denied Weil's motion to compel on November 11, 2001, finding that its review of the government's decision not to file a Rule 35(b) motion is limited to whether the decision is based on a constitutionally impermissible motive, and that Weil had failed to provide any evidence of an unconstitutional motive. Subsequently, the district court denied Weil's motion for reconsideration and motion to strike and for summary judgment. This appeal followed.

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[1] A review of the district court's docket sheet indicates that the district court ordered the government to supplement its one-page response to Weil's motion to compel by November 9, 2001, and the government complied. However, neither the district court's order nor the government's supplemental response are included in the record on appeal. On appeal, the government contends, and Weil does not dispute, that the government argued in its supplemental response that "Weil's allegations were not of sufficient import and credibility; were not based on first-hand information; were subject to allegations of coaching and tailored testimony due to Weil's collaboration and "hours and hours" of discussion with fellow inmates Hammer, Giraldo and Ruiz; and were at odds with sound law enforcement evidence gathering techniques."

II. DISCUSSION

A. Rule 35(b)

On appeal, Weil argues that the district court erred in denying his motion to compel because he adequately demonstrated that the government's refusal to file a Rule 35(b) motion was motivated by vindictiveness and personal bias on the part of the prosecutor and thus violated his due process rights. We review *de novo* whether the district court could compel the government to make a substantial assistance motion. *United States v. Forney*, 9 F.3d 1492, 1498 (11th Cir. 1993) (context of U.S.S.G. § 5K1.1).[3] After review, we conclude that the district court properly denied Weil's motion to compel the government to file a Rule 35(b) motion.

Rule 35 of the Federal Rules of Criminal Procedure provides for the correction or reduction of a sentence under certain circumstances. Subsection (b) of Rule 35 permits a district court to "reduce a sentence to reflect a defendant's subsequent substantial assistance in investigating or prosecuting another person," but only "[i]f the Government so moves within one year after the sentence is imposed." Fed. R. Crim. P. 35(b). In other words, the district court can reduce a defendant's sentence as a result of substantial assistance only upon motion by the government. *United States v. Howard*, 902 F.2d 894, 896-97 (11th Cir. 1990).

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[3] Given the similarity of language and purpose of U.S.S.G. § 5K1.1 and Rule 35(b), in analyzing Weil's argument regarding a substantial assistance motion under Rule 35(b) we rely in part, as did the parties in their briefs, upon cases involving substantial assistance motions under U.S.S.G. § 5K1.1.

Absent an agreement to the contrary, the decision to file a Rule 35(b) motion lies within the sound discretion of the government. *United States v. Alvarez*, 115 F.3d 839, 841 (11th Cir. 1997). Where, as here, the government has decided not to file a Rule 35(b) motion, review by the district court is available, but very limited. Specifically, as the Supreme Court held in *Wade v. United States*, 501 U.S. 181 (1992), "federal district courts have authority to review a prosecutor's refusal to file a substantial-assistance motion and to grant a remedy if they find that the refusal was based on an unconstitutional motive." *Wade*, 504, 185-86.[3] Examples of unconstitutional motive cited in *Wade* include a refusal to file a motion because of a defendant's race or religion. *Id.* at 186. A defendant who claims "merely [to have] provided substantial assistance" or who makes "additional generalized allegations of improper motive" is not entitled to discovery, an evidentiary hearing, or relief. *Id.* Furthermore, a defendant seeking review of a refusal to file a substantial assistance motion "has no right to discovery or an evidentiary hearing unless he makes a 'substantial threshold showing.'" *Id.*

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[3] In *Wade*, the Supreme Court also noted that the defendant would have been entitled to relief "if the prosecutor's refusal to move was not rationally related to any legitimate Government end," but determined that the record did not support such a claim. *Id.* at 186. We note that the government articulated a rational reason for refusing to file a Rule 35(b) motion in Weil's case, namely its concerns about Weil's credibility, his susceptibility to accusations of coaching, and his lack of personal knowledge about the information he was relaying, all of which are legitimate governmental concerns.

Here, at most the record indicates that the government made an oral agreement with Weil to consider the information he provided and determine whether it warranted a Rule 35(b) motion for substantial assistance.[4] The government reviewed Weil's information and determined that it did not constitute substantial assistance and refused to file a Rule 35(b) motion. Therefore, the district court's review, and hence our review, is limited to whether the government's refusal was motivated by some constitutionally "suspect reasons such as his race or his religion." *See Wade*, 504 U.S. at 186.

Weil, however, has made no allegations, much less presented any evidence, indicating that the government's motivation was based on some suspect classification such as his race or religion. Rather, Weil contends that the government's refusal to file a Rule 35(b) motion is based on the personal animosity and vindictiveness of the

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[4] The government contends, and the district court found, that there was no agreement between the government and Weil and that Weil's efforts to cooperate were unsolicited. However, AUSA Sabin's July 6, 2001 letter to Weil suggests that his office had agreed "as a good faith gesture, to review written materials provided by [Weil] relating to the nature and scope of your proffered potential assistance." In any event, this is a distinction without a difference, since nothing in the record suggests that the government unconditionally agreed to file a Rule 35(b) motion, but rather that the government retained the discretion to determine whether the information provided by Weil constituted substantial assistence and whether to file a Rule 35(b) motion. This fact is reflected in Weil's own correspondence with AUSA Sabin dated June 25, 2001, in which he asks for "confirmation of [Sabin's] willingness to review of [sic] all our assistance at the appropriate time, to give us and our families near term hope that we will be granted relief" and expresses "hope that [Sabin] will support a Rule 35(b) motion for each of us."

particular prosecutor assigned to his case.[5] This is not an "unconstitutional motive" as that phrase is used in *Wade*.[6] *Wade* clearly excludes from this phrase allegations that the defendant provided substantial assistance accompanied by "generalized allegations of improper motive." *Id.* at 186.[7] The government's refusal to file a substantial assistance motion is not reviewable for bad faith. *See Forney*, 9

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[5] At various times, in his filings with this Court or with the district court, Weil has claimed that the prosecutor's animosity toward him was due to the fact that he was a one-time confidential FBI source who had broken the law, due to his high socio-economic status, or due to the fact that Weil went over the prosecutor's head to appeal directly to the U.S. Attorney in Florida in offering his substantial assistance or to provide information to U.S. Marshals.

[6] In concluding in *Wade* that court review is restricted to unconstitutional motives, the Supreme Court stated that it saw "no reason why courts should treat a prosecutor's refusal to file a substantial assistance motion differently from a prosecutor's other decisions." *Wade*, 504 U.S. 185. The Supreme Court cited as an example *Wayte v. United States*, 470 U.S. 598 (1985). *Id.* at 185. In *Wayte*, the Supreme Court reviewed a prosecutor's decision whom to prosecute to determine whether the decision was based on "unjustified standards such [sic] race, religion, or other arbitrary classification, including the exercise of protected statutory or constitutional rights." *Wayte v. United States*, 470 U.S. 598, 608 (1985) (citations omitted). Although Weil asserts that the refusal to file a Rule 35(b) motion in his case is a result of prosecutorial vindictiveness, he does not allege that the prosecutor's vindictive purpose was to retaliate against him as a result of the exercise of some statutory or constitutional right.

[7] Weil devotes a significant portion of his appellate brief to describing the numerous instances wherein he provided substantial assistance to the government. However, under *Wade*, a defendant's allegation that he provided substantial assistance is insufficient to entitle the defendant to relief, with or without additional allegations of improper motive. *Wade*, 504 U.S. at 186. In other words, even assuming *arguendo* that Weil's assistance to the government was substantial, absent some showing of an unconstitutional motive on the part of the government, the district court properly denied Weil's motion.

F.3d 1492, 1502 n.5. This sort of inquiry would "intrude into the zone of prosecutorial discretion." *See id.* at 1502 n.4.

In sum, we conclude that Weil failed to make the "substantial threshold showing" of an unconstitutional motive for the government's refusal to file a Rule 35(b) motion. Accordingly, the district court did not err in denying Weil's motion to compel the government to file such a motion, in denying Weil an evidentiary hearing, or in denying Weil's summary judgment motion.

B. Weil's New Arguments

Weil argues that the government "constructively" denied him assistance of counsel and that his counsel was ineffective during Rule 35(b) negotiations with the government, in violation of his Fourth, Fifth, Sixth, and Fourteenth Amendment rights. Among his many arguments, Weil contends that the government intentionally by-passed his counsel and negotiated directly with him to obtain his assistance "in the shortest time possible, with the least effort and the least obligation." He also argues that his counsel was ineffective because he never informed Weil of the need to have in place a cooperation agreement before Weil provided assistance to the government, did not try to secure such an agreement prior to Weil turning over his information, and did not take steps to ensure the government in fact filed a Rule 35(b) motion on Weil's behalf after Weil turned over his information.

After review, we conclude that Weil has not shown any reversible error in the [sic] regard.[8] First, it does not appear Weil raised these claims in the district court. Second, to the extent Weil did raise them, his claims lack merit in any event. Weil did not have a plea agreement with the government, but was convicted after a jury trial. In addition, although we have not addressed the issue, the Fifth Circuit has held that a criminal defendant does not have a constitutional right to assistance of counsel in a Rule 35(b) proceeding. *See United States v. Palomo*, 80nF.3d [sic] 138, 142 (5th Cir. 1996) (holding that a criminal defendant in Rule 35(b) proceeding has no right to counsel under either the Sixth Amendment or the due process clause of the Fifth Amendment). Where a defendant/petitioner has no Sixth Amendment right to counsel, he cannot be deprived of the effective assistance of counsel. *Wainwright v. Torna*, 455 U.S. 586, 587-88 (1982); *Golsten v. Attorney General of Alabama*, 947 F.2d 908, 911 (11th Cir. 1991).

We conclude that, because a Rule 35(b) motion is not a stage of the criminal proceeding where a defendant's substantial rights may be affected, no Sixth Amendment right to counsel attached during Weil's Rule 35(b) proceeding. Likewise, we conclude that, because a Rule 35(b) proceeding is not one in which fundamental fairness necessitates the assistance of a trained advocate, Weil had no Fifth Amendment due process right to counsel. *See Palomo*, 80 F.3d at 141-142. As such, Weil did not have a constitutional right to the effective assistance of counsel or

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[8] This Court reviews questions of constitutional law *de novo*. *Loyd v. Alabama Dept' of Corrections*, 176 F.3d 1336, 1339 (11th Cir. 1999)

to the assistance of counsel during his efforts to provide substantial assistance to the government.

AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 98-866-CR-SEITZ

UNITED STATES OF AMERICA
Plaintiff,

v. (Filed Oct. 29, 2001)

STEPHEN G. WEIL,
Defendant.
_____/

ORDER REQUIRING GOVERNMENT TO FILE SUPPLEMENT

THIS CAUSE is before the Court upon review of Defendant Weil's Motion to Compel Government to File Rule 35(b) Motion, or in the alternative, Motion to Reduce Sentence for Substantial Assistance to Authorities pursuant to Rule 35(b), and the Government's Response in Opposition to Defendant's Motion to Compel Government to File Rule 35(b) Motion. The Court has examined the motion and government's response and finds that the Government's Response is insufficient to assist the Court in providing a meaningful consideration. Therefore, it is hereby:

ORDERED that the Government shall file a Supplement to its Response [D.E. 380] no later than **November 9, 2001**.

APP. B

DONE AND ORDERED in Miami, Florida, this 26th day of OCTOBER, 2001.

/s/ Patricia A. Seitz
PATRICIA A. SEITZ
UNITED STATES
DISTRICT JUDGE

cc: Barry Sabin, AUSA
Benedict P. Kuehne, Esq.
See Attached Service List

Since the initiation of this Court's FAXBACK program, the parties are no longer required to submit envelopes with their motions & proposed orders. Orders should include a full service list.

CASE NO. 98-866-CR-SEITZ-GARBER

SERVICE LIST

Stephen G. Weil, pro se
#11615004
Federal Prison Camp
P.O. Box 779800
Miami, FL 33177

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 98-866-CR-SEITZ

UNITED STATES OF AMERICA,)
)
vs.)
)
STEPHEN G. WEIL.)
)
Defendant.)
)

GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO COMPEL GOVERNMENT TO FILE RULE 35(b) MOTION

The United States of America, by and through the undersigned Assistant United States Attorney, responds in opposition to Defendant Weil's Motion to Compel Government to File Rule 35(b) Motion, or in the Alternative, Motion to Reduce sentence for Substantial Assistance to authorities Pursuant to Rule 35(b), and in support thereof states as follows:

Defendant's motion has no merit in law or fact. The government reviewed defendant's articulated desire to provide assistance to law enforcement personnel. The government, in good faith, has declined to enter into a cooperation relationship with defendant. Defendant has not rendered substantial assistance in the investigation or prosecution of another individual. No constitutional violation has occurred. Defendant has failed to demonstrate an unconstitutional basis for the government's actions and no hearing should be held by this court. Respectfully, defendant's motion should be hearing should

be held by this court. Respectfully, defendant's motion should be summarily denied.

Respectfully submitted,

GUY A. LEWIS
UNITED STATES
ATTORNEY

By: /s/ Barry M. Sabin
BARRY M. SABIN
ASSISTANT UNITED
STATES ATTORNEY
Florida Bar No. 913332
99 NE 4 Street, 8th Floor
Miami, FL 33132
Tel: (305) 961-9060
Fax: (305) 530-7087

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 22nd day of October 2001, to:

Benedict P. Kuehne
Sale & Kuehne
100 SE 2nd Street, Ste. 3550
Miami, FL 33131-2150

/s/ Barry M. Sabin
BARRY M. SABIN
ASSISTANT UNITED
STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 98-866-CR-SEITZ

UNITED STATES OF AMERICA,)	NIGHT BOX FILED
vs.)	
STEPHEN G. WEIL.)	CLARENCE MADDOX CLERK, USDC/SDFL/MIA
Defendant.)	

GOVERNMENT'S SUPPLEMENTAL RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO COMPEL GOVERNMENT TO FILE RULE 35(b) MOTION

The United States of America, by and through the undersigned Assistant United States Attorney, files its supplemental response in opposition to Defendant Weil's Motion to Compel Government to File Rule 35(b) Motion, or in the Alternative, Motion to Reduce Sentence for Substantial Assistance to Authorities Pursuant to Rule 35(b), and in support thereof states as follows:

Defendant asserts that this court should require the government to file a Rule 35(b) motion. He maintains that he rendered substantial assistance by providing information to law enforcement authorities and that the government has acted in bad faith by not filing the motion. Defendant asserts that the government's failure to file a Rule 35(b) motion amounts to a due process violation with the unconstitutional motive apparently to punish defendant "for his prior status as a government operative who

transgressed the limits of the law." (Def. motion at 18). Defendant's contentions are without merit.

It is well-settled that the government has an absolute right to exercise prosecutorial discretion and not file a substantial assistance motion, so long as the decision-making process is not predicated upon a constitutionally impermissible basis, such as a defendant's race or religion. Thus, in most circumstances, the government's decision not to file a motion for a sentencing reduction based upon substantial assistance is not subject to judicial review. *Wade v. United States,* 504 U.S. 181, 185-86 (1992); *United States v. Forney,* 9 F.3d 1492, 1501-1502 (11th Cir. 1993).

In *Wade,* the Supreme Court emphasized that, due to the limited situations where judicial review of the government's exercise of prosecutorial discretion is authorized, a "claim that a defendant merely provided substantial assistance will not entitle a defendant to a remedy or even to discovery or an evidentiary hearing. Nor would additional but generalized allegations of improper motive." *Wade* at 186. Indeed, when a defendant alleges an unconstitutional motive, he is not entitled to an evidentiary hearing unless he makes a substantial threshold showing that the government's refusal was based upon such unconstitutional motive. *Id.* at 185.

We note that defendant's bad faith motion is before this court not from any alleged breach of a plea agreement. Defendant did not plead guilty pursuant to any plea agreement with the government that contained language reflecting good faith obligations by the government to provide defendant with the opportunity to provide assistance. *See generally Santobello v. New York,* 404 U.S. 257, 262 (1971).

After being convicted at trial, defendant sought to voluntarily provide information to law enforcement personnel. Defendant provided the government with written materials. In good faith and with an open mind, the government reviewed these materials. The government did not find that the proffered information was of sufficient import and credibility to expend significant time, effort and resources to pursue defendant's allegations. Much of defendant's allegations were not based upon first-hand information. There was not sufficient indicia of reliability and trustworthiness in defendant's hearsay submissions to expend limited government resources. Defendant forwarded documents relating to the British Trade and Commerce Bank in collaboration with another inmate (Exhs. B and C). According to defendant, this partnership between defendant and another inmate created a "think tank." (Ex. B at 11). As documented in Exhibit H, defendant sought to provide information relating to (allegedly) international money laundering and drug trafficking from three other inmates in addition to defendant (Ex. H at 3). This information resulted from "hours and hours" of discussion between the inmates including defendant. *Id.* Obviously, such a manner and means of forwarding information to the government is not consistent with sound law enforcement investigative practices. Defendant's hearsay submissions are subject to, *inter alia,* allegations of coaching and tailored testimony and inconsistent with law enforcement best practices; competent and credible evidence premised upon an individual with direct personal knowledge of a crime providing that to law enforcement personnel. The prosecutors have discussed defendant's submissions with law enforcement agencies. Investigative agencies have steadfastly advised that there is not sufficient trustworthiness in defendant's hearsay

submissions to rely upon this information in order to pursue legitimate, meaningful criminal investigations. The government does not take lightly the power that is attendant to opening a criminal investigation that targets individuals and/or corporations. Obviously, such a prosecutorial decision is consistent with, and rationally related to, legitimate government interests.

Defendant has not testified in any trial or grand jury proceeding. No arrests have occurred as a result of information provided by defendant. No assets have been seized or forfeited due to defendant's attempted assistance. "'Substantial assistance' generally requires that the defendant's assistance has yielded *results* that are useful to the government, not merely that the defendant expended substantial effort or good faith in *attempting* to assist." *Untied States v. Gonsalves,* 121 F.3d 1416, 1419 (11th Cir. 1997) (emphasis in original) (citation omitted).

Defendant seeks to cloak his allegations in constitutional garb by alleging that the government's refusal to file a rule 35 motion is premised upon defendant's prior status as a former government cooperator who was convicted for participation in a money laundering conspiracy (Mot. at 17). This is not a constitutionally based claim. *See Wade* at 185-186. Defendant's credibility is an issue that the government must evaluate in order to enter a cooperation relationship. If defendant once had a cooperation relationship with law enforcement personnel and abused that trust, that impacts upon his credibility. If defendant has been convicted of a crime, that impacts upon his credibility. If a defendant has not testified truthfully while under oath, that impacts upon his credibility. These are all valid factors relied upon by law enforcement personnel whether to enter into and pursue a cooperation relationship with a

convicted felon. Cognizant of defendant's background, the government still entertained, in good faith, a review of his written submissions. The information does not contain sufficient indicia of trustworthiness and reliability for the government to proceed to even enter a cooperation relationship with defendant. Since the government does not even desire to enter into a cooperation relationship with defendant, it can hardly be tenable to assert that the defendant has rendered substantial assistance to law enforcement personnel. The government's decision-making process was thoughtful, not arbitrary, related to a legitimate government end and was not premised upon any unconstitutional motive. "The presumption of regularity supports" prosecutorial decisions and, "in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties." *United States v. Chemcial Foundation, Inc.,* 272 U.S. 1, 14-15 (1926); *see United States v. Armstrong,* 517 U.S. 456, 464 (1996).

Defendant's general allegations of bad faith and conclusory allegations that he has been the victim of a constitutional due process violation are insufficient to justify either an evidentiary hearing or any additional relief.

Accordingly, defendant's claim warrants no further review by this Court.

Respectfully submitted,

GUY A. LEWIS
UNITED STATES
ATTORNEY

By: /s/ Barry M. Sabin
BARRY M. SABIN
ASSISTANT UNITED
STATES ATTORNEY
Florida Bar No. 913332
99 NE 4 Street, 8th Floor
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Fax: (305) 530-7087

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 13th day of November 2001, to:

Benedict P. Kuehne
Sale & Kuehne
100 SE 2nd Street, Ste. 3550
Miami, FL 33131-2150
/s/ Barry M. Sabin
BARRY M. SABIN
ASSISTANT UNITED
STATES ATTORNEY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO 98-866-CR-SEITZ

UNITED STATES OF AMERICA,

Plaintiff

v. (Filed Nov. 26, 2001)

STEPHEN G. WEIL,

Defendant

_____/

ORDER DENYING DEFENDANT WEIL'S MOTION TO COMPEL GOVERNMENT TO FILE RULE 35(b) MOTION

THIS MATTER is before the Court on the Motion of Defendant Weil to Compel the Government to File a Rule 35(b) Motion, or in the alternative, a Motion to Reduce Sentence for Substantial Assistance to Authorities pursuant to Rule 35(b). The Court has considered Defendant Weil's Motion, the Government's Supplemental Response in Opposition to the Motion to Compel and Defendant's Reply. For the reasons set out below, the Court will deny Defendant Weil's Motion.

Defendant Weil asserts that the Court should require the Government to file a Rule 35(b) Motion because the Government has acted in bad faith by not filing the motion after he rendered substantial assistance by providing information to law enforcement authorities. Defendant asserts that the Government's failure to file the Rule 35(b) Motion violates due process and fundamental fairness

because its refusal is due to the fact that he is a former Government cooperator who was convicted of participating in a money laundering conspiracy. The filing of a substantial assistance motion is left to the exercise of prosecutorial discretion. Except for when the decision making process is premised on a constitutionally infirm basis, a decision not to file a sentencing reduction motion based upon substantial assistance is not subject to judicial review. *Wade v. United States*, 504 U.S. 181, 185-186 (1992); *United States v. Forney*, 9 F.3d 1492, 1501-1502 (11th Cir. 1993).

In analyzing Defendant's motion, it is important to note that there was no agreement between the parties obligating the United States to provide the Defendant with an opportunity to provide substantial assistance or to evaluate any information the Defendant provided. It was only after being convicted at trial that the Defendant requested the Government to review written materials which allegedly reflected others' criminal violations. Unsolicited efforts to cooperate do not create an obligation on Government's part to reward the cooperation.

Notwithstanding the lack of any obligation to consider Defendant's submissions, the record reveals the Government did review the materials provided and concluded that the Defendant's submissions were hearsay and would be subject to allegations of coaching and tailored testimony that are inconsistent with law enforcement best practices. Furthermore, based upon the Government's discussions with other law enforcement agencies it has been advised that there is not sufficient trustworthiness in the Defendant's submissions to commit limited government resources to pursuing legitimate meaningful criminal investigations. At the heart of any substantial assistance

evaluation is the general requirement that the "Defendant's assistance has yielded results that are useful to the government, not merely that the Defendant expended substantial effort or good faith in *attempting* to assist." *United States v. Gonsalves*, 121 F.3d 1416, 1419 (11th Cir. 1997) (emphasis in original (citation omitted)). Based on its review of the Defendant's materials, the Government has concluded that the Defendant's attempts to assist do not meet this test.

More importantly, the Government has had an opportunity to evaluate the Defendant's credibility which is an essential foundation for entering into any cooperation agreement. The Court can appreciate the Government's reluctance to vouch for the credibility of an informant who has previously had a cooperation relationship but abused that trust. Moreover, where a Defendant has not testified truthfully under oath, this also impacts upon on [sic] his credibility. The Court has had an opportunity to observe Defendant both during trial and at his sentencing. The Defendant's conduct at these two proceedings provide [sic] clear evidence of the Government's justification for choosing not [sic] enter into a new cooperation relationship with the Defendant. Because the Government has a legitimate basis to not renew a cooperation relationship with the Defendant, there is no basis to assert that the Defendant has rendered substantial assistance to law enforcement personnel. In the absence of clear evidence to the contrary, a court must presume that prosecutors have properly discharged their official duties. *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926); *see United States v. Armstrong*, 517 U.S. 456, 464 (1996).

Because the Defendant has failed to provide any evidence much less clear evidence to support his general

conclusory allegations of bad faith and allegations that he's been the victim [sic] a constitutional due process violation, it is hereby

ORDERED that Defendant's Motion to Compel the Government to File a Rule 35(b) Motion is **DENIED**.

DONE AND ORDERED in Miami, Florida this 26th day of November, 2001.

/s/ Patricia A. Seitz
PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

cc: Stephen G. Weil, pro se
#11615-004
Federal Prison Camp
P.O. Box 779800
Miami, FL 33177

Barry M. Sabin, Esq., AUSA
Benedict P. Kuehne, Esq.

Since the initiation of this Court's FAXBACK program, the parties are no longer required to submit envelopes with their motions & proposed orders. Orders should include a full service list.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO 98-866-CR-SEITZ

UNITED STATES OF AMERICA,

v. (Filed Dec. 10, 2001)

STEVE WEIL,

_____/

ORDER DENYING MOTION TO STRIKE AND MOTION FOR SUMMARY JUDGMENT

This matter came before the Court on Defendant's *pro se* Motion for Summary Judgment and Motion to Strike Government Brief. The Court having reviewed the motions and being otherwise fully advised, it is

ORDERED that the Motion to Strike is DENIED as it is premised on a misapprehension of the facts. It is further

ORDERED that the Motion for Summary Judgment is DENIED as there exists no issue to be addressed by such a motion.

DONE AND ORDERED in Miami, Florida this 10th day of December, 2001.

/s/ Patricia A. Seitz
PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

APP. F

Copies to:
Barry Sabin, AUSA
Steve Weil, Reg. No. 11615-004, FPC Miami, P. O. Box 779800, Miami, FL 33177

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO 98-866-CR-SEITZ

UNITED STATES OF AMERICA,

v. (Filed Dec. 6, 2001)

STEVE G. WEIL,

_____/

ORDER DENYING MOTION FOR RECONSIDERATION

This matter came before the Court on Defendant's Motion for Reconsideration of Order Denying Motion to Compel Filing of Rule 35(b) Motion. The Court having reviewed the motion and being otherwise fully advised, it is

ORDERED that the Motion for Reconsideration is DENIED.

DONE AND ORDERED in Miami, Florida this 5th day of December, 2001.

/s/ Patricia A. Seitz
PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

Copies to:
Jena King, AUSA
Steve Weil, Reg. No. 11615-004, FPC Miami, P. O. Box 779800, Miami, FL 33177

APP. G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO 98-866-CR-SEITZ

UNITED STATES OF AMERICA,

v. (Filed Nov. 20, 2001)

STEVE WEIL,

_____/

ORDER DENYING MOTION TO SEAL COURT DOCUMENTS

This matter came before the Court on Defendant Steve Weil's *pro se* Motion to Seal Court Documents. The Court having reviewed the motion and being otherwise fully advised, it is

ORDERED that Defendant's Motion to Seal is DENIED.

DONE AND ORDERED in Miami, Florida this 19th day of November, 2001.

/s/ Patricia A. Seitz
PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

Copies to:
Jena King, AUSA
Steve Weil, Reg. No. 11615-004, FPC Miami, P. O. Box 779800, Miami, FL 33177

APP. H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO 98-866-CR-SEITZ

UNITED STATES OF AMERICA,

v.

(Filed Jan. 30, 2002)

STEVE WEIL,

_____/

ORDER DENYING MOTION TO SEAL COURT DOCUMENTS

This matter came before the Court on Defendant Steve Weil's *pro se* Motion to Seal Court Documents. The Court having reviewed the motion and being otherwise fully advised, it is

ORDERED that Defendant's Motion to Seal is DENIED. The Clerk is instructed to unseal Docket Entry 392.

DONE AND ORDERED in Miami, Florida this 29th day of January, 2002.

/s/ Patricia A. Seitz
PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

Copies to:
Jena King, AUSA
Steve Weil, Reg. No. 11615-004, FPC Miami, P. O. Box 779800, Miami, FL 33177

APP. I

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-10123-AA

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

STEPHEN G. WEIL,

Defendant-Appellant.

On Appeal from the United States District Court
for the Southern District of Florida

(Filed Sep. 26, 2002)

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

(Opinion _____, 11th Cir., 19__, ___ F.2d ___).

Before: ANDERSON, DUBINA and HULL, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

APP. J

ENTERED FOR THE COURT:

/s/ Frank M. Hull
UNITED STATES CIRCUIT JUDGE

ORD-42
(12/01)